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TC 3800

Brande and McCleary
5976 Falling Tree Lane
Alta Loma, CA 91737

In re application of
Daniel Skorez
Application No. 10/700,390
Filed: November 3, 2003
For: SWIVELING VALVE OPERATOR
MOUNTING SYSTEM

: **DECISION ON PETITION**
: **TO MAKE SPECIAL**
: **(INFRINGEMENT)**
:

This is a decision on the petition under 37 C.F.R. § 1.102(d) filed December 24, 2003 to make the above-identified application special. The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed December 24, 2003 lacks requirement 2(B) above. The petition includes a declaration by Lewis M. Brande, Esq., the attorney of record in the above noted application. Mr. Brande states, "I have compared the claims in the above-indicated application with the advertisement from E.H. Wachs., and it is my opinion that this application would be infringed by the manufacture, use or sale of said product." The petition further includes a declaration by Dan Skorcz, the applicant in the above noted application. Mr. Skorcz states that "(a)fter careful consideration, it was the opinion of my attorney that the product of E.H. Wachs, Inc. infringed the claims of this application."

These statements are insufficient to grant a petition under 37 CFR 1.102 (d) to make the above-identified application special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement. In this regard, neither of these statements expressly state "that a rigid comparison of the alleged infringing

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device, product or method with the claims of the application has been made", and that, in the opinion of the person making the statement, "some of the claims are unquestionably infringed"; as required by 2(B) of M.P.E.P. § 708.02.

In view of this deficiency, the petition is **DISMISSED**.


With regards to element 2(C) above, an Information Disclosure Statement was filed on November 3, 2003.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above.

Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

SUMMARY: Petition to Make Special **DISMISSED**.



Steven N. Meyers
Special Programs Examiner
Technology Center 3600
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SNM/rwg: 10/18/04